IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3289 OF 1992

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEETABEN RAMANBHAI PATEL

Versus

SABARKANTHA DISTRICT PRIMARY EDUCATION SELECTION COMMITTEE & ORS.

Appearance:

1. Special Civil Application No. 3289 of 1992

MR KB PUJARA for Petitioner

MR RA MISHRA for Respondent Nos. 1-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. The petitioner, Geetaben Ramanbhai Patel, applied on 22nd April, 1991 in response to an advertisement dated 10th April, 1991 issued by Sabarkantha District Education

Committee, Himmatnagar for the recruitment of primary teachers. The petitioner was interviewed on 3rd March, 1992 and was given an appointment order dated 16th April, 1992 on a condition that the petitioner shall submit the original certificates so that she can be allowed to resume duty. On 23rd April, 1992, she submitted all necessary original certificates to the authorities and on such submission, she was allowed to resume duty on 27th April, 1992.

2. To the utter shock of the petitioner, on 2nd May, 1992, some `Bit' Inspector came to the school where the petitioner was serving and asked her to sign a blank paper, under the pretext that the same is required to complete certain formalities. Subsequently, it was learnt that the blank paper, on which the signature was obtained, was used for making a report to the effect that, `she is relieved from the service.' The document, purported to have been written by the petitioner, is produced by Mr.R.A.Mishra, the learned Advocate for the respondents, today for perusal before the Court. It is stated therein that, "it is the request of the undersigned, Geetaben Ramanbhai Patel, that pursuant to your order dated 2nd May, 1992, I stand relieved from the aforesaid school after school hours, which may be noted." Mr.Pujara, the learned Advocate, submitted that the order mentioned therein i.e. dated 2nd May, 1992, was never served on the petitioner. He submitted that it is not clear as to what prevented the authorities to serve the order dated 2nd May, 1992 to the petitioner. In absence of any plausible explanation, the said document does not inspire any confidence, much less to the effect that it has been executed by the petitioner in her own handwriting. Even the endorsements made on the said letter are required to be noted. One endorsement is, "No.292". Below that, there is a date "04.09.1992". Below that, there is an endorsement in black ink to the effect that, "after making an entry in the appointment register, the same shall be placed before the authority making the endorsement i.e. District Primary Education Officer." There is another endorsement wherein there are effacements. It reads that, "the appointment register is with _____ (not legible). After receiving the same, entry will be made and the same will be placed". The same is signed like the earlier one on behalf of the District Primary Education Officer. It is required to be noted in particular that both these endorsements are made in two different inks, one in black and the other one in blue. The second endorsement is signed on behalf of the District Primary Education Officer, `in black ink', while in the first endorsement, the remark is written in black

ink directing the subordinate to place the same before him after making an entry in the appointment register.

3. The petition was filed on 11th May, 1992 and this Court, by an order dated 13th May, 1992, granted ad interim relief in terms of paragraph-11(b) while issuing Rule. The Court was also pleased to issue notice as to interim relief returnable on 30th June, 1992 and after bipartite hearing, the Court was pleased to confirm the ad interim relief and order the Special Civil Application to be placed for final hearing on 23rd September, 1992. Despite this, the affidavit-in-reply is filed in this matter only in the month of March-2002. That speaks for itself as to how urgent the matter was treated by the authorities.

4. Mr.R.A.Mishra, the learned Advocate for the respondent, relied upon a judgement of the Full Bench in Special Civil Application Nos.491, 492, 493 and 552 of 1996 dated 8th September, 2000 in support of his contention that the applicant should have the qualification on the date of making the application. Mr.Mishra submitted that in the matters where the last date for making an application is prescribed, the candidate must possess the qualification on that date and, therefore, according to Mr.Mishra, the present petitioner did not possess the requisite qualification on the date of her making the application i.e. 22nd April, 1991.

This contention of Mr.Mishra cannot be accepted. The facts of the present case are that the petitioner applied on 22nd April, 1991; she was interviewed by the committee on 3rd March, 1992; thus, it necessarily means that the Selection Committee had given a go-by to the aforesaid requirement of possessing the qualification on the date of making the application. The question, therefore, arises for consideration of this Court is as to whether once the Selection Committee has given a go-by to such a requirement, the Selection Committee can now be allowed to resort to the same and terminate the services of the petitioner. In such circumstances, the principle of estoppel will definitely stare in the face of the authorities. The authorities, having interviewed a person, issued an appointment order, accepted the original certificates and allowed her to resume duty, cannot be allowed to sack of the petitioner in a manner in which it is tried to be. The petitioner was never given an opportunity nor was ever communicated the ground on which her services were sought to be terminated. The document, which is produced by Mr.Mishra, does not

inspire any confidence. The person, who had obtained the writing from the petitioner, should have served the order, which is referred to in the said writing. Mr.Mishra is not able to establish the factum of service of order terminating the services of the petitioner. Assuming for the sake of argument that this writing was executed by the petitioner, the same does not validate the act of termination as it is without following the principles of natural justice.

5. In the present case, the petitioner was interviewed by the Selection Committee of Ahmedabad District on 20th March, 1992 and was issued an appointment order dated 30th March, 1992, but then, the petitioner accepted the present appointment because it was near to her native place. The principle of estoppel will apply with all force because if the Selection Committee had not interviewed the present petitioner on 31st March, 1992 and had not issued appointment order on 16th April, 1992, the petitioner could have opted for the appointment at Ahmedabad District. Not only that, Mr.K.B.Pujara, learned Advocate for the petitioner, submitted that even in Sabarkantha District, the petitioner was interviewed on 3rd March, 1992 and there also, her name was placed in the merit list, which was also communicated to the petitioner on 16th April, 1992. That being so, the authorities cannot now be allowed to say that, `the petitioner was not qualified on the date of her making an application.' Assuming for the sake of argument that the contention raised by Mr.Mishra that the candidate ought to have got the qualification on the last date of the application prescribed by the advertisement is right, from the facts set out hereinabove, it is more than clear that the authorities had given a go-by to that requirement and that being so, the authorities cannot be allowed to terminate the services of the petitioner.

6. Mr.K.B.Pujara, learned Advocate for the petitioner, relied upon a decision of this Court in Special Civil Application No.3678 of 1988 dated 27th July, 1988. According to Mr.Pujara, the facts of that case and the facts of the present case are almost identical and, therefore, his submission is that it applies with full force. In that case, the Court was pleased to direct the respondents to allow the petitioner to appear for the interview for the post in question. Whereas, here the petitioner is not only allowed to appear in the interview, but, on the basis of the performance of the petitioner in the interview, is issued appointment order and subsequent thereto, on production of the original documents, is allowed to resume duty on

27th April, 1992. In view of these facts, it is too late in a day to hold that the petitioner was not qualified on the date of making the application and, therefore, her services are required to be terminated on that ground.

7. Mr.Pujara, the learned Advocate for the petitioner, also relied upon a judgement of the Apex Court in the matter of Lakhan Lal Tripathi vs. Commandant General & Anr., reported at (2000) 10 SCC 184, wherein even in the matter of age, the Honourable the Apex Court is pleased to hold that without giving an opportunity of hearing to a candidate, an adverse decision cannot be taken. In the present case, the decision of the Honourable the Apex Court will apply with full force because the petitioner herein is also not given an opportunity before the so-called termination of the service. The termination remains to be `so-called termination' because as is borne out from the facts of the case, the present petitioner was never served with any termination order.

8. In view of the aforesaid discussion, this petition is allowed. The respondents are directed to allow the petitioner to continue her in service treating the so-called termination to be nonest for all purposes, with all consequential benefits. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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